

REMARKS

Reconsideration and allowance are respectfully requested.

Antecedence for the above amendments exists in the original application, original claims and original drawings. No new matter has been added. Entry and allowance are requested.

INTERVIEW:

Applicant acknowledges the May 4, 2005 Interview granted by Examiners Laura Grier, Xu Mei, and Sinh Tran to applicant's representatives.

Applicant objects to the Examiner's indication, in a telephone call to Applicant an hour before the actual Interview, that her Supervisor Ms Sinh Tran "... was not in, was new and not fully aware of the case, and could not attend the Interview." Subsequently Ms Sinh Tran was made available towards the end of the Interview. Examiner Grier had Primary Xu Mei at the interview but he did not expressly participate in the discussions.

Applicant objects to Ms Tran's blanket statement at the end of the Interview that anything placed on a person would end up being the claimed invention, as for example a hat. Ms Tran provided no evidence to support that blanket statement. Furthermore, justifying the Examiner's unprecedented, arbitrary seven office actions, each allowing and then rejecting previously allowed claims without intervention and making special by an SPE, Ms Tran posed a question implying that seven-office-actions and later withdrawals of previous allowances was desirable. Ms Tran

also indicated that merely because the case had an inordinate number of office actions would not result in allowance of the case.

PROSECUTION HISTORY:

Applicant objects to the Examiner's unjustified dilatory tactics in the prosecution of this case. The record evidence (original claims 1-29) reflects the following actions in which the examiner repeatedly re-opened prosecution based on references available from the 1990's and the examiner's piecemeal prosecution history:

| <u>OFFICE ACTION</u> | <u>MAILING DATE</u> | <u>ALLOWED CLAIMS</u>                           |
|----------------------|---------------------|---|
| First                | 08-15-01            | 14, 26, 27                                      |
| Second               | 11-13-02            | 5, 6, 7, 10, 11-21, 23-29                       |
| Third                | 05-08-03            | 5, 7, 11-21, 26-29                              |
| Fourth               | 11-10-03            | 7, 11-21, 22-27, 29<br>withdrawn allowance of 5 |
| Fifth                | 04-07-04            | 7, 11-27, 29                                    |
| Sixth                | 10-18-04            | 7, 11-27, 29                                    |
| Seventh              | 03-03-05            | 11-27, 29<br>withdrawn allowance of 7           |

As pointed out at the Interview the latest office action is in error and should be withdrawn because it fails to comply with MPEP § 707.02, a copy of which was shown to all the examiners at the Interview. For example, the latest office action has not been signed by a Supervisor, the case is five years old and is still retained at the Examiner's discretion to continue prosecution ~~to eternity~~, even though every new search yields references older than those of record, and the case has not been made special by the examiner.

**CLAIM REJECTIONS:**

Claims 7, 2, 5, 6, 8-10, and 30-37 are patentable over Ryll (US Patent 5,813,990), Mathews (US Patent 5,431,170), Frenkel (US Patent 5,064,410) and Voigt (US Patent 5,606,743).

As pointed out at the Interview, it would not have been obvious for a person of ordinary skill in the art to conclude that the infrared phototransistors and infrared detector module of Ryll were analogous to the Applicant's light emitting diodes and photosensors.

Nothing in Ryll would have suggested: (as set forth in claim 30)

- a plurality of light emitting diodes on the glasses for emitting light onto a surface;
- a plurality of photosensors on the glasses for receiving reflected light;
- electronic circuitry on the glasses and connected to the plurality of photosensors.

There is a difference between a plurality of light emitting diodes and a single phototransistor. Contrary to what the Examiner states, phototransistors and light emitting diodes are not equivalents. The use of a plurality of light emitting diodes and photosensors is distinct from the use of a single phototransistor and detector module as disclosed in Ryll. Ryll states that a phototransistor is used, there is no mention of using more than one phototransistor. There is no motivation provided in Ryll or any other references that would indicate that multiple phototransistors were considered.

Infrared phototransistors and light emitting diodes have distinct properties that are useful in different applications. The two are not necessarily interchangeable. Phototransistors and light emitting diodes are not equivalent devices and as such, it would not have been obvious to substitute a plurality of light emitting diodes for a single phototransistor.

Further, there is no indication in Ryll that multiple infrared detector modules were contemplated. Infrared detector modules are not interchangeable with photosensors in all applications. Moreover, the use of multiple photosensors is distinct from the use of a single infrared detector.

The Examiner has provided no evidence that light emitting diodes and photosensors are well known in the art as being substitutes for infrared phototransistors and infrared detector modules. As such, it would not be obvious for Applicant's light emitting diodes and photosensors to replace the devices in Ryll.

Nothing would have suggested "a display on lenses of the glasses for indicating a sensed condition of a user" as set forth in the claims. Ryll's display 48 is not on lenses of glasses.

Mathews relates to a headband with a wristband readout device. The headband worn against the forehead of a user has a pulse rate meter with sensors for determining pulse rate and blood oxygen levels. A short-wave radio communication transmits signals from the sensor on the forehead to the display on the wrist. It is not understood how Mathews could have anything to do with the claimed invention. According to SPE Tran anything on

a wearer is the same as having monitoring glasses on a user. By that extrapolation the examiner is contending that having light emitting diodes anywhere proximal to a person is the claimed invention. However, that fails to meet the obviousness standards set forth in 35 U.S.C. 103 and set forth by the Federal Circuit over the past century.

The Examiner contended at the Interview that Mathews mentions the words "spectacles" in column 4, line 64. However, even SPE Tran agreed that the particular references to the word spectacles has nothing to do with the claimed invention because mathews merely states that sensor is worn on the forehead and the read-out display may be worn on the head (rather than the wrist) to provide "a visible through the wearer's spectacles". How that has anything to do with the claimed invention is beyond comprehension because the office action fails to meet the burden of presenting a prima facie case of obviousness.

There is nothing inherent in Ryll and in Mathews that teaches, suggests or even remotely provides a combination of the two, nor does the combined teachings have anything to do with the claimed with a plurality of light emitting diodes on the glasses for emitting light onto a surface, a plurality of photosensors on the glasses for receiving reflected light, electronic circuitry on the glasses and connected to the plurality of photosensors.

Frenkel relates to eyeglasses with a circuit for monitoring the condition of the wearer and emitting an alarm responsive to change in the physiological function thereby controlling stress.

Frenkel requires an imagescope for his circuitry to work. Frenkel measures the skin's electrical conductivity with electrodes contacting the skin and the conductive electrolytes from sweat on the skin. The alarms are provided as auditory or visual signals. Visual signals may be LEDs for which the glasses are to be worn during stressful periods. The LEDs warn of increasing stress and the LEDs may be pulsed to provide calming effects. Frenkel teaches using the eyeglasses for stress treatment. However, nothing in the individual teaching of each references nor in the combined teachings of Ryll, Mathews and Frenkel suggest or inherently provides a plurality of light emitting diodes on the glasses for emitting light onto a surface, a plurality of photosensors on the glasses for receiving reflected light, electronic circuitry on the glasses and connected to the plurality of photosensors.

It has been shown that it would not have been obvious to change the configuration of the detection system. Therefore, Ryll, Mathews and Frenkel would not have made, the independent claims 7, 30, and 39 nor the dependent claims, obvious.

Claims 3-4 would not have been obvious from and are patentable over Ryll and Vogt.

Nothing in Ryll would have suggested "at least one solar cell" as in claims 3 and 4.

Regarding claim 3, the Applicant's invention is patentable over Ryll in view of Vogt. As shown above, independent claims are patentable over Ryll. Further, Ryll does not disclose the

use of a solar power cell in connection with the glasses. Ryll makes no reference to a power source other than a standard battery power supply installed in a battery housing.

There is no motivation in the prior art to combine Ryll with Vogt. The use of solar power cells for monitoring heart conditions is never mentioned in the Ryll device and no alternatives to battery power sources are alluded to.

The glasses of the Vogt reference were designed for intermittent use as sunglasses by individuals exercising outside. Vogt makes no claims as to monitoring any body statistics. There would be no motivation to wear the Vogt sunglasses while exercising indoors. Ryll on the other hand, is a device meant primarily for the monitoring of body statistics by athletes, while training in a variety of conditions both indoors and out. Ryll does not anticipate that all users will be exposed to sunlight while training and thus does not provide for solar power supplies. Due to the intended uses of the two devices, there is no motivation to combine the Ryll and Vogt references as the Examiner suggests.

Claim 39 would not have been obvious from and is patentable over the references.

Nothing in Ryll would have rendered obvious:

- emitting light onto a surface of a user by a plurality of light emitting diodes on the glasses;
- receiving reflected light by a plurality of photosensors on the glasses;

- determining changes in the amount of reflected light received by the photosensors;
  - transmitting a signal corresponding to the change in reflected light from the photosensors to circuitry on the glasses;
  - determining a user's condition by measuring changes in the signals received by the circuitry;
- as set forth in claim 39.

It would not have been obvious for a person of ordinary skill in the art to conclude that the infrared phototransistors and infrared detector module of Ryll were analogous to the Applicant's light emitting diodes and photosensors.

There is a difference between a plurality of light emitting diodes and a single phototransistor. Contrary to what the Examiner states, phototransistors and light emitting diodes are not equivalents. The use of a plurality of light emitting diodes and photosensors is distinct from the use of a single phototransistor and detector module as disclosed in Ryll. Ryll states that a phototransistor is used; there is no mention of using more than one phototransistor. There is no motivation provided in Ryll or any other references that would indicate that multiple phototransistors were considered. Infrared phototransistors and light emitting diodes have distinct properties that are useful in different applications. The two are not necessarily interchangeable. Phototransistors and light emitting diodes are not equivalent devices and as such, it would



not have been obvious to substitute a plurality of light emitting diodes for a single phototransistor.

Further, there is no indication in Ryll that multiple infrared detector modules were contemplated. Infrared detector modules are not interchangeable with photosensors in all applications. Moreover, the use of multiple photosensors is distinct from the use of a single infrared detector.

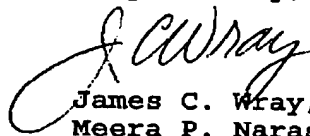
The Examiner has provided no evidence that light emitting diodes and photosensors are well known in the art as being substitutes for infrared phototransistors and infrared detector modules. As such, it would not be obvious for Applicant's light emitting diodes and photosensors to replace the devices in Ryll.

Nothing in the prior art would have made obvious the invention as claimed.

Each of claims 7, 2-6, 8-10, and 30-39 points out features that would not have been obvious from the prior art.

Since Applicant has presented a novel, unique and non-obvious invention, reconsideration and allowance are respectfully requested.

Respectfully,



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